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Executive Board  
Libby Area Technical Assistance Group, Inc.  
8561 Farm to Market Road  
Libby, Montana 59923

April 29, 2003

Dear Board Member,

Please find enclosed my application for the Technical Advisor contracted position for the Libby Area Technical Assistance Group.

As a way of introduction, I am a Libby business owner, resident and concerned citizen. I am a native of Montana and have worked in management positions for a number of large employers in the fields of mining, high temperature research and development and healthcare management. My wife is a twenty three year resident of Libby and together we own and operate the Focal Point Inc., the only full service photography studio in Lincoln County. I have for the last three years, been a contract photographer and writer for a number of large publishers and have a total of four books to my name.

My professional training in the field of management is extensive and comes as a result of both academic preparation and specific training afforded me by a number of my previous employers. (The Anaconda Company, Atlantic Richfield and The Sisters of Providence, Montana Energy Research and Development Institute, etc.). My work in the field of research and development was specific to technical reporting, grant and project proposal preparation, contract reporting and project management. My present work as a contractor allows me the professional flexibility to dedicate an large amount of time to the pursuit of the performance directives as outlined within Technical Advisor position.

I feel I am well qualified for the position of Technical Advisor, however, that is not the primary reason I feel compelled to submit this application. Both myself and my wife love our life here in Libby and feel the same economic concerns many others like us must feel as our community deals with the problems associated with asbestos exposure. I see the Environmental Protection Agency as a true partner in the final solution of our grave concerns, and I am inspired to offer whatever assistance I can for the bright future of Libby. I have over the years gained a good deal of respect for the EPA employees who have been assigned to the Libby cleanup and would very much like to assist their future work on behalf of our community. I have been associated with other EPA cleanups around Montana and have watched other communities grow and prosper through their constructive association with a host of federal agencies. I wish to play a meaningful role in the forging of a solid partnership with any federal or private agency who take a position of leadership during these difficult times. I see the Technical Advisor's position as a constructive way to achieve that goal.

My resume will point out the level of my specific training and if I am called for an interview, I can go into detail relating to some of the fascinating projects I have worked on in the past. However, the single thing I cannot pass on through letter form is my sincere desire to see my hometown blossom as a result of our hard work.

I thank you in advance for the opportunity to submit this application and I wish your board the very best in the future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gordon Sullivan", with a large, stylized flourish at the end.

Gordon Sullivan

Response  
to  
Supplemental  
Questions

## Supplemental Questions

### *What training have you had that would assist you in fulfilling position obligations?*

Aside from the academic training and specialized training outlined in the enclosed resume, I have held upper level management positions in three very competitive industries in which change took place at rapid rates. In the mining industry for example, the last three years of my employment saw a dramatic downturn in copper prices and the need to completely re-evaluate traditional operating methods came about. I served on a management task force (12 managers) that addressed the question from a multi-disciplined angle and came up with revolutionary solutions. We decreased operating expense even lower than we believed we could, while developing a long range strategic plan that helped re-position us in the changing market. We were so successful at restructure, we were purchased by one of the nation's largest oil companies, Atlantic Richfield. A second management task force was set up to develop plans for the complex transition and assist our operations as they blended into the larger organization. This three year experience was an valuable management lesson for me, as it related to the handling of complex operating and transition strategies. The work force that was impacted by our work exceeded 2500 employees. This training was something no academic, or otherwise structured setting could have possible provided.

The second area of training I believe will serve my work as the Technical Advisor came while I worked in the field of research and development. While employed as a manager for the Montana Energy Research and Development Institute (MERDI), I was required to attend several structured training programs that empathize several elements of Federal Government Contracting. The following list includes some of the specific disciplines in which I received training: Contract Reporting, Contract Organization, federal solicited and un-solicited project proposal preparation and evaluation, federal grant writing and reporting requirements, federal procurement regulations, and federal subcontract preparation and management.

### *What do you see as your strengths?*

I believe I have three particular strengths that will serve me as the Technical Advisor. First, I and my wife are financial stake holders in both the EPA cleanup process and the long-term economic life of Libby, Montana. We own a home that is in need of cleanup and we own a small business that has serviced the residents of Lincoln County for over 20 years. Our client base exceeds 400 to 600 individuals per year and in as much, we are in communication with many other Libby stakeholders on a personal bases.

Second, I believe I have received training that specifically prepares me for the specialized requirements of the position. Training in both technical and management fields.

Third, During the scope of my professional career, I have had the opportunity to hold both mid- management and upper-management positions and have been directly responsible to outside boards with respect to the requirements of my position. I have been personally responsible for operating budgets sometimes exceeding millions of dollars and have managed large staffs. The two most important traits this experience has taught me are: First, to keep an open mind with respect to opportunities and new ideas, and second, the paramount value of working as a team when it comes to the solution of complex problems.

*What do you see as your weaknesses?*

I believe every manager comes with a full bag of personal or professional weaknesses, the successful ones, are those who truly realize their weaknesses and finds someone else on the team that makes up the difference! I believe two weakness I have with respect to this position include: First, because I am a stake holder, I approach the subject with a passion that others might not have. To overcome this particular weakness, I need to rely on those around me and practice the ability to compromise for the betterment of the whole. Second, I have been trained in a number of areas that in one way or the other, may relate to issues in Libby however don't relate specifically to the directives of the Technical Advisor's position (example: grant writing, health care management). I need to make sure I am not drawn into the other areas of this complex community problem, as a result of my training. I believe I can address this issue however, there may be those in the community that might not see my need to disassociate myself from many elements of the more comprehensive discussion as I clearly focus on the area of EPA cleanup.

*How would your association with the Libby Area Technical Assistance Group be mutually beneficial?*

I believe the community of Libby, Montana faces a problem of larger magnitude than any other Montana community has ever faced during the scope of our lifetime. Unfortunately, we face our situation during a time our nation is financially fueling a major war effort, during a time in which there are large splits in federal government agencies and during a time our local economy is on a steady downward trend with little hope for traditional industry. We clearly appear within the national eye as it relates to asbestos cleanup and exposure and our federal partners have limited budgets in which to help finance our needs as a community and I believe we have an almost unattainable hope the federal government is our only salvation. This scenario provides our community with either a golden opportunity or certain economic disaster. I believe we have the chance to either shine or fold up and wither in the years ahead, depending largely on what we do as a unified community in the very near future. The response to the question is really very simple, I intend as a property owner, business owner and subcontractor to the TAG, to shine because if we don't, we will all suffer a defeat that might just cost us everything we have worked for in life, from our health and welfare to our financial base. Our survival as a community depends on our ability to seek a mutually

beneficial response to our problems and rely on whatever tools we are able to bring to the table during the next ten years.

# Professional Resume

Gordon Sullivan

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Gordon Sullivan  
143 Crossway Ave.  
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Libby, Montana 59923  
(406)293-8496

## Professional Goals and Objectives

Over the course of my professional career I have been challenged with a high level of management and technical responsibility for which I have been well prepared by those with whom I have been employed. My professional training has been developed in a variety of technical and managerial fields and comes as a result of past employers investing heavily in my training. This training comes within the academic and non academic arena.

My professional goal is to remain active in the course of business and invest in the future progress of the community in which I live and work. I wish to remain employed as a private contractor, compete for the work I do, and be judged on the value of my personal and professional achievements. I have the training and professional experience to assist a number of different types of community related projects and wish to put my training to work in a constructive manner.

I am a creative and dynamic thinker and wish my work to reflect an openness of mind with regard to different and more effective ways to accomplish difficult tasks. I enjoy professional accomplishment, especially under competitive and arduous circumstances and thrive on a team approach to problem resolution.

In whatever work I do in the future, I want it to stand for progress and team advancement, not just another attempt to re-devise the norm.

## Academic Background

### Highschool

Name of School:	Butte Central High School
Location:	Butte, Montana
Degree:	General Business-Diploma
Dates of Attendance:	September 1963 to June 1967



**College**

Name of School: Montana College of Mineral Science and Technology  
 Location: Butte, Montana  
 Degree: Bachelor of Arts- English Composition with associate studies in Environmental Science.  
 Dates of Attendance: September 1968 to June 1973

**Dialogue Relating to Academic Experience**

The Montana College of Mineral Science and Technology is one of the nation's most accredited Environmental and Engineering Science institutions. I originally entered Montana Tech to pursue a degree in Environmental Engineering and completed about two years study under that discipline. At the beginning of the third year, my interests changed to Environmental Law and I re-designed my course work to relate more to the specific and generalized requirements for application to Law School. Upon graduation, I took the Law School Admissions Test ( LSAT) scored well and made application at two law schools. I was accepted at both.

During the last three years of academic study at Montana Tech, I was employed as a technician in the Geological Research Department of the Anaconda Company. During the last year of study I was transferred to the Governmental and Community Relations Department which was then a division of the Legal Department for the Butte Operations of the company. I worked in this department until I graduated. With the help of the Director of the Legal Department, I applied and was accepted to the Montana State School of Law and Gonzaga University Law School. However, before entering law school, I was offered a mid-management position with the Anaconda Company in its Butte Operations and began a ten year management career in the mining industry.

Instead of attending law school, The Anaconda Company paid to send me back to complete a number of post graduate courses at Montana Tech. These courses and several others are reflected in the following section of this resume.

**Academic Post Graduate**

Name of School: Montana College of Mineral Science and Technology  
 Location: Butte, Montana  
 Degree: None  
 Dates of Attendance: 1973 to 1980

### Sample of Graduate Courses:

- \* Law For Engineers
- \* Symposium on the Minerals Industry
- \* Environmental Law and Regulations
- \* Drafting and Assessing Environmental Impact Statements.
- \* Symposium on the Oil Industry
- \* Technical Writing
- \* Economic Forecasting
- \* Advanced Statistical Analysis

### General Dialogue- Post Graduate Education

During my post graduate attendance at Montana Tech many of the courses selected related to changes taking place within the mining industry and a growing social concern about overall environmental impact of mining and oil production. Even though I did move toward a masters degree the company was more interested in specific training. I left the mining industry after ten years and went on in research and development and finally health care management.

During the time I spent employed in the fields of research and development and health care, I attended college at a post graduate level. Many of the course work was subsidized by my employer.

Other non-university related courses were completed in a extended learning or continuing education format. A list of those courses follows.

### Continuing Education (University Related)

Name of School:	University of San Francisco-School of Business
Location:	San Francisco-Extended Learning Program
Degree:	None
Dates of Attendance:	1986

### Sample of Extended Learning Courses taken:

- \* Fund Development, Endowment and Planned Giving.

- \* Grant Writing for Private and Corporate Foundations.
- \* Management Systems.
- \* Strategic Planning and Corporate Development.

### Specialized Training-Non University Related

Name of School:	<b>Procurement Associates.</b>
Location:	Washington, DC.
Subject:	Federal Procurement Regulations.
	Grant and Unsolicited Project Proposals, Appraisal and Evaluation Process Within the Defense Department.
Course Duration:	Two Weeks

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Name of School:	<b>Procurement Associates.</b>
Location:	Washington, DC.
Subject:	Federal Procurement Regulations
	Grant and unsolicited project proposals, appraisal and evaluation process within the Department of Energy.
Course Duration:	Two Weeks

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Name of School:	<b>Combined Training</b>
Location:	Butte, Helena, Montana.
Subject:	Mid Management and Supervision.
Duration of Course:	Eight Weeks

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Name of School: Fund Raising School  
 Location: San Francisco

Subject: Intense Management of 501-C3.  
 Non Profit operating structure.  
 Foundation Management and Board  
 Development.

Course Duration: Two Weeks

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Name of Course: Health Care Marketing  
 Location: Seattle, Washington

Subject: Trends in Health Care Marketing-  
 Demographic Analysis and New  
 Product Development.

Course Duration: One Week

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Name of Course: Health Care System Development  
 and Development of Unrelated  
 Business Income.

Presenter: Arthur Anderson and Associates

Course Duration: One Week

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Name of Course: Non Profit System Management and  
 501-C3 Strategy

Presenter: Arthur Anderson and Associates

Location: Seattle, Washington

Course Duration: One Week.

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Name of Course: Long Range Strategic Planning for  
 Preferred Provider Organizations.

Presenter: Arthur Anderson and Associates

Location: Seattle, Washington

Course Duration: One Week

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**General Training Courses and Workshops:  
Non-University Related**

Joint Venturing, Private Sector and Professional Corporate Investment in 501-C3 Organizations.

Fund Raising Strategies, Special Events, Planned Giving and Foundation Management.

Grant Writing and Project Proposal Preparation.

Media Relations and Response Management.

Local, State and National Economic Trends.

Development of Endowment Strategy for Private Sector Investment.

Development of Working Foundations for Non- Profit Sector.

Foundation Management and Accounting.

Strategic Planning for Non Profit Organizations.

Marketing Medical Staff Services.

Environment Response in the Extractive Industries.

Environmental Impact Statement Preparation and Assessment

Waste Water Management and Re-calculation.

Environment and the Media.

Defense Department Contracting and Reporting Procedure.

Federal Procurement and Government Bidding for Services.

Federal Grant Application Process and Evaluation.

Department of Energy Research Contracting and Reporting.

Managing Capital Campaigns and Campaign Committees.

Foundation Board Development.

## Work Experience

### Present:

In 1998, I became co-owner of The Focal Point Inc. and began to work as a contract based outdoor photographer and writer. Over four years I have produced three new books under contract to some of the nation's largest publishers and just delivered my newest publication on The Ancient Ruins of the Southwest, to be released in the fall of 2003. For this publication I wrote an 85,000 word text and supplied over 1500 images for this 350 page book. I hold contracts to produce several national calendars each year and draw from a stock collection of over 120,000 images to complete these projects.

My next three book projects will be produced from my office in Libby, Montana and are available for discussion with respect to timing. At this time, I hold two contracts for two additional books. I presently write and submit outdoor articles for a number of national magazines.

I am co-owner in the Focal Point Inc. and intend to remain and grow in the Libby, Montana area.

### Past:

Prior to relocating to the Libby area, I held the following positions:

**Chief Development Officer for The Montana Wildlife Federation - Helena, Montana.**

**Executive Director of St. Johns Lutheran Hospital Foundation - Libby, Montana.**

**Director of Hospital and Foundation Development  
St. Johns Lutheran Hospital - Libby, Montana.**

**Owner and Operator- Paragon Marketing and Business Development  
Consulting Services - Helena, Montana**

**Director of Marketing, Special Project and Fund Development  
Columbus Hospital - Great Falls, Montana**

**Director of Community Relations, Marketing and Fund Development**

**Columbus Hospital - Great Falls, Montana**

**Director Community Relations and Development  
St. James Community Hospital - Butte, Montana**

**Consulting Sub Contractor  
Montana Energy Institute  
Site Documentation and Project Documentation Services - Butte, Montana**

**Manager of Communication and Reporting Services  
Montana Energy and MHD Research and Development Institute - Butte, Montana**

**Member of Strategic Planning Task Force- Atlantic Richfield Corporation-  
Anaconda Mining Company - Butte, Montana**

**Manager of Community, Governmental Relations and Training Services  
Butte Operations- Anaconda Mining Company - Butte, Montana**

**Communications Supervisor- Butte Operations Anaconda Mining Company - Butte,  
Montana**

**Consultant to the Governmental and Community Relations Department of The  
Anaconda Mining Company - Butte, Montana**

**Lab Specialist- Geological Research Department and Mine Planning Department  
Butte Operations- Anaconda Company - Butte, Montana**

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### **Project Experience**

**In the health care management positions I held, I served on the Administrative Council of each organization. These councils are management groups which share overall management responsibility for the hospitals for which I worked.**

**I have managed operating budgets ranging from \$15,000 to over \$175,000.**

**I have shared the responsibility of preparing and approving operating budgets in excess of \$ 35 million.**

**I have managed staffs as large as 19 individuals and served in several project manager positions which included highly trained specialists and scientists.**

**During my career in research and development, I drafted a significant number of project proposals, grant applications, business plans and operating plans.**

**I have served on technical teams employed in geothermal development, biomass development, geophysical analysis, geological analysis, high temperature product development and energy appliance testing.**

**I have written several "Certificate of Need Applications" for new service development in the health care and served as outreach manager for several spin off corporations in the field of health care.**

**I served as an "Advisory Board Member" for the placement of the Technical Writing Program at Montana College of Mineral Science and Technology.**

**Served as a committee member for Rural Hospital Development for Senator Max Baucus.**

**I served as a project manager for the "Gift of Life" program in Great Falls, Montana.**

**I served as project manager for "Mercy Flight" in Great Falls, Montana and was one of the team who set up the first EMT and ACLS system to operate in a national park- Glacier National Park, Montana.**

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## References

## Personal References

William ( Bill ) Crismore  
237 Airfield Road  
Libby, Montana 59923  
293-7405

Bernie Casidy  
Lincoln County Attorney  
1419 Cabinet Ave.  
Libby, Montana 59923  
293-5610- Home  
293-2717-Office

Ms. Kate Huntsburger  
117 Commerce Way  
Libby, Montana 59923  
293-3757 Office  
Mt. State Family Services

## **TECHNICAL ADVISOR CONTRACT**

This Contract is entered into the 1<sup>st</sup> Day of June 2003, by and between the Libby Area Technical Assistance Group Inc., hereafter referred to as LATAG or Recipient, and The Focal Point Inc. hereafter referred to as Contractor.

### **I. SCOPE OF CONTRACT**

The Contractor agrees to perform the following services:

#### **A. PURPOSE:**

LATAG is entering into this Contract with the Contractor for the provision of necessary technical advisory services associated with the execution and accomplishment of LATAG's EPA technical assistance grant as part of Libby Superfund Site cleanup remedial activities. The Contractor will assist the LATAG in interpreting documents generated throughout the Superfund process at the Libby site including all operable units. The Contractor also will help LATAG review site data and data-gathering techniques. Through this technical assistance, the Contractor will ensure that LATAG is thoroughly informed about all aspects of site cleanup activities, which will enable them to participate more effectively in EPA's decision-making process.

#### **B. CONTRACTUAL PERIOD AND GENERAL STATEMENT OF DUTIES:**

This Contract will cover an initial period of approximately twenty eight months, from the date that this Contract is initiated to September 30, 2005. This Contract may be renewed, at the option of the LATAG, after the initial Contract period for additional one-to-three year contract periods as long as the cleanup continues, but it is not to exceed ten years. If the LATAG desires to exercise its option to extend the Contract, it shall

provide written notice to the Contractor no later than 90 days prior to the expiration of the present term.

The Contractor will perform the specific tasks as listed in paragraph C below during the initial contractual period. In these tasks the Contractor will proceed under direction of the LATAG Chair or the Chair's designate. At the completion of given tasks a review will be made by the Chair or designate as to the adequacy and timing of work. This will constitute an ongoing performance review and will serve to identify any problems encountered in performing tasks and to inform the Contractor of any needed changes in performance.

**C. SPECIFIC CONTRACTOR TASKS:**

Jointly accomplished with LATAG Board:

1. Provide review and comment for activities attendant to, resulting from, required by (or supportive of), the remedial activities undertaken by the EPA (and/or any other agency or department of the United States, the State of Montana and its subdivisions, local government units, potentially responsible parties and any other third parties) at the Libby Superfund Site that effects operable units.
2. Based upon the reviews and other pertinent information, identify and report the need of additional studies and analysis. If any, clarify, verify, document, and/or investigate areas of potential omission and/or concern.
3. Submit summary memos and reports (reviews and comments to the EPA).
4. Present reports to the general public in open community meetings with the goal of educating all those affected by the identified contaminant(s).
5. Recruit, coordinate and facilitate LATAG's program with contracted and volunteer experts. Define problems and identify a range of possible solutions.
6. Promote public interest, education and participation as

appropriate. This includes hosting and attending public educational meetings, organizing media and other outreach activities, responding to requests and informational needs and disseminating information and resources to the public at large.

**Specific to the Technical Advisor:**

1. Review technical and any other appropriate documents and work plans generated during the term of the Libby Superfund Site operable units. Reviews shall include (but not limited to) research and review of relevant data, work plans, operating assumptions and operating methodology that may be presented in the local site plan.
2. Review documents, plans and work de tail to determine what data, rational, and assumptions served as the foundation for these studies and analysis. Based on that information, do independent review relating to the particular subject and render a secondary opinion as to the adequacy of the original studies and analysis suggesting potential alternative paths of action and alternative approaches where necessary. The review of studies (including research and physical documentation) shall not constitute re-sampling or the secondary generation of new data unless further warranted by the EPA. Secondary analysis of existing data shall be accomplished only when deemed appropriate by the contracting agency and agreed upon by all operating groups.
3. Provide written reports that present interpretations of existing analyses and studies, justification of these interpretations, descriptions of independent analyses, comparison of results and recommendations for additional analysis of field monitoring.
4. Attend all operable unit site meetings and provide written and verbal reports to the TAG Board on the content of such meetings.

5. Review and analyze remedial activities and attendant schedules for all operable units of the Libby Superfund Site. Be prepared to offer reports, recommendations and product analysis on alternative, replacement and reconstruction methodology relating to homeowner property as called for.
6. Identify, secure subcontracts with and manage the services of other professionals as required by/for LATAG. Such services may be for legal, medical expertise, educational outreach and other disciplines/professions including (but not limited to) engineering, economics, sociology, geology, chemistry, botany, zoology, toxicology, biology, journalistic and clerical. This will be done in coordination with duties and activities of the Grant Administrator and LATAG Board.
7. In harmony with the TAG Board, recruit, coordinate and report the results of the efforts of volunteer professional, scientific and technical consultants. Through the establishment of operating subcommittees of the Board, allow for input from all volunteer professionals and insure that such input reaches the appropriate level of inclusion within the decision making function of the board. Ensure in-kind (pro-bono) consultation and flow of information.
8. Identify and report issues which may be expected to influence remedial activities or schedules at the Libby Superfund Site operable units. Such issues include (but are not limited to) waste repository sites, public health and environmental risk assessment, institutional controls, applicable and relevant (or appropriate) regulations, public participation in remedial alternative demonstrations, local government activities of state agencies and potential responsible party (PRP) activities.
9. In conjunction with the other LATAG contracted positions (and along with the board) disseminate information to the public related to the Libby Superfund Site including inherent activities associated with progress site operable units. This activity is to be accomplished by attendance at public meetings, guest appearances and participation in local gatherings wherein the subject of cleanup activities are to

be discussed.

10. Serve as an advocate for the impacted homeowners, property owners, business owners and the LATAG Board. Develop a work plan to ensure the effectiveness of this important function.
11. Inform and update the LATAG Board of issues and events as appropriate. These will occur as necessary but always at regular meetings.

**D. CONTRACTUAL DIRECTION AND ACCEPTANCE:**

LATAG, Inc. appoints the Chair as the overall manager for this Contract. The Chair is the person authorised by the LATAG to amend this Contract, negotiate changes, receive reports and accept any other deliverables. The Contractor must not incur costs at the direction of anyone else; otherwise the LATAG shall not be liable for these costs.

**II. PAYMENT**

- A. LATAG shall compensate the Contractor for the services outlined in this Contract at a rate of fifty dollars per hour (\$50 per labor hour), which shall include overhead, general and administrative costs and any allowed fee or profit. The Contractor shall provide his/her own internet access, office space, computer, software, printer, copy machine, FAX machine, filing cabinet, Libby Superfund Site and operable unit related local transportation, telephone line, office supplies including file folders, paper toner, calculator, ink cartridges all at his expense as included in the \$50 per hour rate charged.
- B. Reimbursement for travel costs to meetings outside of the Libby Superfund Site area shall be at the then-applicable federal rates. Lodging and per diem rates shall be limited to approved federal reimbursement rates.

- C. Overall maximum payment for the Contract, including any reimbursement authorized in (A) and (B) above, shall not exceed thirty seven thousand dollars (\$37,000).
- D. In no event shall the Contractor be reimbursed for holidays, sick days, or time other than that actually spent providing the services.

### III. METHOD OF PAYMENT

#### A. Standard Invoice System:

Monthly, the Contractor shall submit time sheets and corresponding invoices to LATAG for services performed during the calendar month just ended. Time sheets must indicate the hours charged on a daily basis (even if zero). Invoices must clearly show the total hours charged for the month, rate and total cost, and specify the total charge for that month for each "Other Direct Cost" contract provision II. B. category. If the invoices are approved, LATAG agrees to make reasonable efforts to process payments promptly in accordance with the provisions of 40 CFR Part 35, subpart M (Final Rule).

The LATAG is limited under the Technical Assistance Grant (TAG) Program to reimbursement on quarterly basis except that when monthly costs exceed \$500, monthly reimbursement may be requested. Thus, Contractor payment is also subject to this payment schedule. If invoices are not approved, LATAG shall promptly negotiate with the Contractor in an effort to resolve any disagreement. LATAG shall not be liable for any interest or penalty charges for late payments caused by reimbursement delays by EPA or the LATAG.

- B. The LATAG retains the right to withhold up to 10% of the total Contract value pending closeout of this Contract. Final payment shall be made in accordance with Article V.I.



#### **IV. FUNDING AND FISCAL APPROPRIATIONS**

Obligations for expenditures by EPA for TAGs will be approved for entire budget periods. The obligation of the LATAG to renew this Contract may be subject to the availability of EPA appropriations.

#### **V. GENERAL CLAUSES**

##### **A. Supersession**

The LATAG and the Contractor agree that this and other appropriate clauses in 40 CFR 33.1030 apply to that work eligible for EPA assistance to be performed under this Contract and that these clauses supersede any conflicting provisions of this Contract.

##### **B. Privity of Contract**

This Contract is expected to be funded in part with funds from the U.S. EPA. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this Contract or any lower tier contract. This Contract is subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

##### **C. Termination**

1. This Contract may be terminated in whole or in part, in writing, by either party in the event of substantial failure by either party to fulfill its obligations under this Contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

2. This Contract may be terminated in whole or in part, in writing, by either party for its convenience, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination. If the terminating party is the Contractor, then the Contractor will train and orient (without charge to Contract) the new contractor or LATAG Board member taking over the duties listed in this Contract.
3. If termination for default is effected by the LATAG, or if termination for convenience is effected by the Contractor, an equitable adjustment in the price provided for in this Contract shall be made but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Contractor at the time of termination may be adjusted to cover any additional cost to the LATAG because of the Contractor's default or termination for convenience. If termination for default is effected by the Contractor, or if termination for convenience is effected by LATAG, the equitable adjustment shall include a reasonable profit for services or other work performed.

The equitable adjustment for any termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Contractor relating to commitments which had become firm prior to the termination.

4. Upon receipt of a termination action under paragraphs (1) or (2) above, the Contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the Recipient all data, drawings, specifications, reports, estimates,

summaries and other information and material as may have been accumulated by the Contractor in performing this Contract, whether completed or in process.

5. Upon termination under paragraphs (1) or (2) above, the LATAG may take over the work and may award another party a contract to complete the work under this Contract.
6. If, after termination for failure of the Contractor to fulfill contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the Contract price shall be made as provided in paragraph (3) of this clause.

#### D. Remedies

Unless otherwise provided in this Contract, all claims, counter-claims, disputes and other matters in question between the LATAG and the Contractor arising out of, or relating to, this Contract or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Montana.

#### E. Audit-Access to Records

1. The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this Contract in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30, in effect on the date of execution of this Contract.

The Contractor also shall maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any

negotiated contract or change order and a copy of the cost summary submitted to the Recipient. The U.S. EPA, the Comptroller General of the United States, the U.S. Department of Labor, the LATAG and Montana or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection.

2. If this is a formally advertised, competitively awarded, fixed-price Contractor agrees to make paragraphs (1) through (7) of this clause applicable to all negotiated change orders and contract amendments affecting the Contract price. In the case of all other types of prime contracts, the Contractor agrees to make paragraphs (1) through (7) applicable to all contracts it awards in excess of \$25,000, at any tier, and to make paragraphs (1) through (7) of this clause applicable to all change orders directly related to project performance.
3. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency.
4. The Contractor agrees to disclose all information and reports resulting from access to records under paragraphs (1) and (2) of this clause to any of the agencies referred to in paragraph (1).
5. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (1) of this clause shall have access to records and at a reasonable time for as long as the records are maintained.

6. This right of access clause applies to financial records pertaining to all contracts (except formally advertised, competitively awarded, fixed-price contracts) and all contract change orders regardless of the type of contract and all contract amendments regardless of the type of contract. In addition, this right of access applies to all records pertaining to all contract, contract change orders and contract amendments:
  - a. To the extent the records pertain directly to Contract performance.
  - b. If there is any indication that fraud, gross abuse or corrupt practices may be involved.
  - c. If the Contract is terminated for default or for convenience.

**F. Covenant Against Contingent Fees**

The Contractor assures that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this assurance, the LATAG shall have the right to annul this agreement without liability or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage or brokerage or contingent fee.

**G. Gratuities**

1. If the Recipient finds after a notice and hearing that the Contractor or any of the Contractor's agents or representatives offered or gave gratuities (in the form of

entertainment, gifts or otherwise) to any official, employee, or agent of the Recipient, the State or EPA in an attempt to secure a contract or favorable treatment in awarding amending or making any determinations related to the performance of this Contract, the Recipient may, by written notice to the Contractor, terminate this Contract. The Recipient also may pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the Recipient bases such finds shall be an issue and may reviewed in proceedings under the Remedies clause of this Contract.

2. In the event this Contract is terminated as provided in paragraph 1. above, the Recipient may pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Recipient) which shall be not less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such office or employee.

#### H. Responsibility of the Contractor

1. The Contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all reports or other services furnished by the Contractor under his/her Contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the reports and other services.
2. The Contractor shall perform the professional services necessary to accomplish the work specified in this Contract in accordance with this Contract and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

3. The Recipient's or EPA's approval of reports and incidental work or materials furnished hereunder shall not in any way relieve the Contractor of responsibility for the technical adequacy of his/her work. Neither the Recipient's nor EPA's review, approval, acceptance or payment of any of the services shall be construed as a waiver of any rights under this Contract or of any cause for action arising out of the performance of this Contract.
4. The Contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the Recipient or EPA caused by the Contractor's negligent performance of any of the services furnished under this Contract except for errors, omissions or other deficiencies to the extent attributable to the Recipient, Recipient-furnished data or any third party. The Contractor shall not be responsible for any time delays in the project caused by circumstances beyond the Contractor's control.
5. The Contractor's obligations under this clause are in addition to the Contractor's other express or implied assurances under this contract or state law and in no way diminish any other rights that the Recipient may have against the Contractor for faulty materials, equipment or work.

#### I. Final Payment

Upon satisfactory completion of the work performed under this Contract, as a condition before final payment under this Contract, or as a termination settlement under this Contract, the Contractor shall execute and deliver to the Recipient a release from any future claims against the Recipient arising under this Contract, except claims that are specifically exempted by the Contractor to be set forth in the release. Unless otherwise provided in this Contract, by state law or otherwise expressly agreed to be the parties to this Contract, final payment under this Contract or

settlement upon termination of this Contract shall not constitute a waiver of the Recipient's claims against the Contractor under this Contract.

**J. Organizational Conflict of Interest**

An organizational conflict of interest exists when the nature of the proposed work may result in an unfair competitive advantage to the Contractor or impair the Contractor's objectivity in performing the Contract work.

1. The Contractor warrants, to the best of his/her knowledge and belief, that either there are no relevant facts or circumstances that could give rise to an organizational conflict of interest or that the Contractor has disclosed all such relevant information.
2. Prior to the commencement of any work, the Contractor agrees either to notify the Recipient that, to the best of his/her knowledge and belief, no actual, apparent, or potential organizational conflict of interest exists or to identify to the Recipient any actual, apparent or potential organizational conflict of interest.
3. The Contractor agrees that if an actual, apparent or potential organization conflict of interest is identified during performance, he/she will immediately make a full disclosure in writing to the Recipient. This disclosure shall include a description of actions that the Contractor has taken or proposes to take after consultation with the Recipient to avoid, mitigate or neutralize the actual, apparent, or potential organizational conflict of interest. The Contractor shall continue performance until notified by the Recipient of any contrary action to be taken.



4. The Contractor expressly agrees to immediately notify the Recipient by telephone and by letter should he/she enter into any other agreement or contract that would create an actual or potential conflict of interest or violation of the Procurement Integrity Act of 1988. The Recipient may terminate this Agreement for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware, or should have been aware, of a potential organizational conflict after award and did not disclose or misrepresented relevant information to the Recipient, the Recipient may terminate this Agreement for default or pursue such other remedies as may be permitted by law.
5. The Contractor further agrees to insert into any such subcontract or consulting agreement hereunder, provisions that shall conform substantially to the language of this Agreement.

K. Personal Conflict of Interest

1. In addition to the requirement of Article J, the following provisions with regard to employee personnel performing under this Contract shall apply until the earlier of the termination date of the affected employee or the duration of this Contract.
2. The Contractor agrees to immediately notify the Recipient of any actual, apparent or potential personal conflict of interest with regard to any employee, subcontractor employee or consultant working on or having access to information concerning this Contract. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee or consultant with an entity that may impair the objectivity of the employee, subcontractor employee or consultant in performing the work.

3. The Contractor agrees to notify the Recipient prior to incurring costs for that employee's work where an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on this Contract has begun, the Contractor shall immediately notify the Recipient of the personal conflict of interest. The Contractor shall continue performance of the Contract until notified by the Recipient of the appropriate action to be taken.
4. The Contractor agrees to insert into each subcontract or consulting agreement that he/she enters language that shall conform substantially to the agreement.

L. Independent Contractor

The services provided by the Contractor are on a professional basis as an independent contractor, determining his/her own manner of performing the work, and shall not be considered an employee of the LATAG within the meaning or the application of any federal, state or local laws or regulations governing Unemployment Insurance, Social Security benefits, Workmen's Compensation, Industrial Accident, Labor or Taxes. It is likewise understood that the Contractor shall not be considered an employee within the meaning or application of the LATAG employee fringe benefit programs for the purposes of vacations, holidays, health benefits or Employee Retirement Plan. The Contractor expressly acknowledges that he/she shall hold the LATAG harmless from any claims by third parties that may be asserted against him/her and deriving in any way from his/her travels, presence or other activities connected with this Agreement.

**M. Ineligible Activities Prohibited**

The services to be provided by the Contractor under this Contract shall not include any of the following activities:

1. Serving as a TAG Grant Technical Advisor at the same site (Libby Superfund) for which the Contractor is doing work for the federal or state government or any other entity.
2. Assisting an attorney in preparing a legal action or preparing for and serving as an expert witness at any legal proceeding.
3. Partisan political activity, including lobbying for any issue or cause or to further the election or defeat of any candidate for public office.
4. Generation of new primary data.
5. Reopening final EPA decisions or conducting disputes with EPA.

**N. Preparation and Distribution of Informational Materials**

The Contractor shall not, without prior review and approval by the Recipient, disclose or release informational materials to the general public, other governmental agencies, businesses or other legal entities.

**O. Record Retention**

All records required under this Contract shall be maintained by the Contractor during performance on EPA-assisted work under this Contract. Such records must clearly detail acquisitions, work progress, reports, expenditures and commitments indicating their relationship to established costs and schedules. These records shall be retained for at least ten years from close-out of

the Contract, unless audit, litigation, cost recovery, and/or any disputes are initiated before the end of the ten-year retention period. Prior written approval shall be obtained from the LATAG before any records may be destroyed after the record retention period.

ACCEPTANCE SIGNATURES:

\_\_\_\_\_  
George Keck/LATAG

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gordon Sullivan/The Focal Point Inc.

\_\_\_\_\_  
Date